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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,643	04/10/2001	Isaiah Moore JR.	IM-1	7659

7590
Michael I. Kroll
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Syosset, NY 11791

04/04/2003

EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,643

Applicant(s)

MOORE, ISAIAH

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-18 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Randall (3,099,450).

Regarding claim 1, Randall shows a baseball batting practice apparatus and method, comprising: selecting a spherical ball (A) from which a segment (B) has been removed to leave the ball comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent (see column 1, lines 36-40 and lines 63-66) of the original spherical ball diameter; gripping the ball in a manner to enable one of several standard pitches; initiating the throwing motion; moving the arm in a manner to enable the chosen standard pitch (see column 1, lines 51-62); and releasing the ball at a time and in a manner to enable the chosen pitch and to direct the ball to a target area in proximity to a human batter (column 2, lines 23-26), to enable the human batter to attempt to identify standard pitches and hit the ball with a bat and thereby improve the human batter's batting skills. Regarding the limitation "selecting a pitcher of lesser skill from a large number of practice pitchers", although this limitation is not explicitly taught by Randall, however, it is considered an obvious step, since pitchers have various degree of skill, and most likely one pitcher would be

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less skilled than another and would require additional attention and training, and it would have been obvious to select a pitcher of “lesser skill” from a group of pitchers/players in order to provide additional training.

Regarding claim 2, Randall shows the removed segment is one-half of the original spherical ball (see column 1, lines 36-39).

Regarding claim 15, Randall shows the ball is constructed from rubber (see column 1, lines 41-44).

3. Claims 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (3,099,450) in view of Official Notice.

Regarding claims 6-14, Randall as disclosed above teaches that the modified ball can be held and pitched in a variety of ways in order to achieve a number of different pitching techniques. Randall does not specifically name the various types of pitches, but describes the various types of arm movements and the different ways for holding and propelling the modified ball (see column 1, lines 51-62). There are many different types of pitches and they are considered to be old and conventional, and it would have been obvious in view of the Official Notice to pitch the ball in a variety of pitches in order to make the game more interesting and increasingly more difficult.

4. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (3,099,450) in view of Gibbs et al (1,484,390).

Randall as disclosed above does not expressly indicate if the various types of pitches along with the arm movement and the different ways of holding and propelling the modified ball

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are provided in an instructional manual or chart. To provide instructional graphs, charts, tables, manuals, booklets, etc. is old and conventional and specifically described by Gibbs et al (see figures 1-6). It would have been obvious in view of Gibbs et al to have provided an instructional table for the training apparatus of Randall, so that the instructions are readily available for the players to achieve the desired pitch each time.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Randall (3,099,450).

Regarding claim 21, Randall discloses an apparatus and method for playing baseball using a modified baseball and bat comprising: substituting for the ball a modified ball (A), the modified ball comprising a spherical unit from which a segment (B) has been removed to leave a unit comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent of the original spherical ball diameter, and playing the game using the modified ball (see column 1, lines 36-40 and lines 63-66) and providing a bat that has a diameter smaller than a regulation baseball bat (see column 2, lines 23-26).

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Response to Arguments

Applicant's arguments with respect to claims 1, 2, 6-18 and 21 have been considered but are not persuasive. The Randall reference shows a modified ball and bat that meet the structural limitation of the claimed invention and further describes various steps of holding and throw the modified ball in order to achieve different pitching effects (see column 1, lines 50-62). Randall has not expressly disclosed each and every arm movement required to carry out the various known pitches. The steps (arm positioning/movements) are so well known and conventional, that the patentee (Randall) may have thought that no additional comments were required.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703 308 3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703 308 2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7768 for regular communications and 703 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.



Paul T. Sewell
Supervisory Patent Examiner
Group 3700

MA
2 April 2003